

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARRIS GROUP, INC., ARUBA NETWORKS, INC.,
HEWLETT PACKARD ENTERPRISE COMPANY, and HP, INC.,
Petitioner,

JUNIPER NETWORKS, INC., BROCADE COMMUNICATIONS
SYSTEMS, INC., and RUCKUS WIRELESS, INC.,
Petitioner,

v.

MOBILE TELECOMMUNICATIONS TECHNOLOGIES, LLC,
Patent Owner.

Cases IPR2016-00768,¹ IPR2017-00640 (Patent 5,659,891)
IPR2017-00637 (Patent 5,915,210)
IPR2017-00642 (Patent 5,590,403)

Before MEREDITH C. PETRAVICK and SCOTT A. DANIELS,
Administrative Patent Judges.

PETRAVICK, *Administrative Patent Judge.*

ORDER²

Filing of Documents and Evidence
37 C.F.R. §§ 42.24, 42.6 and 42.63

¹ Case IPR2016-00766 has been joined with IPR2016-00768.

² This Order addresses the same or similar issue in the proceedings listed above. Therefore, we issue one Order to be filed in each proceeding. The parties, however, are not authorized to use this style of filing.

IPR2016-00766, IPR2017-00640 (Patent 5,659,891)
IPR2017-00637 (Patent 5,915,210)
IPR2017-00642 (Patent 5,590,403)

A conference call was held on June 9, 2017 between counsel for the parties and Judges Petravick and Daniels. The purpose of the call was to discuss non-compliance of certain papers and evidence with the Board's Rules.

A court reporter was present to transcribe the conference call. The transcript should be filed in each of these proceedings as soon as it is available.

Petitioner's Reply in IPR2016-00768

A petitioner's reply in an *inter partes* review is limited to 5,600 words. 37 C.F.R. § 42.24(c)(1). "Any paper whose length is specified by type-volume limits must include a certification stating the number of words in the paper. A party may rely on the word count of the word-processing system used to prepare the paper." 37 C.F.R. § 42.24(d).

In IPR2016-00768, the petitioner's reply states "[a]ccording to the word-processing system's word count, the brief contains 5590 words, excluding the parts of the brief exempted by 37 C.F.R. 42.24(c)." IPR2016-00768, Paper 36, 39 ("Pet. Reply"). It appears, however, that Petitioner failed to use normal spacing for numerous citations and, thus, reduced the word count. For example, Petitioner did not use conventional spacing in many of its citations, for example: "Pap.13" (Pet. Reply 1); "Inst.12" (*id.*); "Ex.1018¶¶9-10" (*id.* at 2); "POR6-7" (*id.* at 5); "47 C.F.R. §22.106" (*id.* at 11) and "emph.orig." (*id.* at 14). See The Blue Book, Twentieth Ed., Rules 3.3, 5.1; *Pi-Net Int'l, Inc. v. JPMorgan Chase & Co.*, 600 F. App'x 774, 775

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(Fed. Cir. 2015) (determining deletion of required spacing circumvents rule on word count). If normal spacing were used, the petitioner's reply would exceed the 5,600 word limit. We note that, in contrast to the petitioner's reply, Petitioner uses normal spacing for citations in other papers of record. For example, Petitioner uses "Paper 14 at 16" or "Paper 32–34" in other papers, as opposed to "Pap.13" in the petitioner's reply. *See* IPR2016-00768, Paper 35, 2, Paper 39, 2, Pet. Reply 1.

Petitioner must review the petitioner's reply and correct each instance of abnormal spacing. A corrected petitioner's reply should be filed no later than June 13, 2017. The corrected petitioner's reply must include the word count certification required by 37 C.F.R. § 42.24(d) and must not exceed the 5,600 word limit. Petitioner may only correct spacing and delete material. Blank space should replace the deleted material, in order for the pagination of the petitioner's reply to remain the same. No other alterations or additions should be made.

Patent Owner Response in IPR2016-00768

A patent owner response in an *inter partes* review is limited to 14,000 words. 37 C.F.R. §§ 42.24(a)(1)(i), (b)(2). In IPR2016-00768, the patent owner response does not include the certification required by Rule 42.24(d). During the conference call, Patent Owner indicated that the patent owner response exceeds the 14,000 word limit. The patent owner response does not comply with Rules 42.24 (b)(2) and (d).

IPR2016-00766, IPR2017-00640 (Patent 5,659,891)

IPR2017-00637 (Patent 5,915,210)

IPR2017-00642 (Patent 5,590,403)

Patent Owner reproduces a number of passages of text from other documents as images in the patent owner response. IPR2016-00768, Paper 28, 18, 34, 39, 41, 42, 43, 66–67. An example is reproduced below.

```
17 |      Q.   Decrease DM.  
18 |      A.   Decrease DM.  
19 |          That means that you move the outermost  
20 | carrier farther out. That decreases DM.  
21 |          That means that the spacing between the  
22 | subcarriers would have to become closer.
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Id. at 43 (reproducing text from Ex. 2013 at 187:17–22). The Board’s Rules are specific regarding font, typeface, and spacing of block quotations. In documents, created for the proceeding 14-point, Times New Roman proportional font, with normal spacing, must be used. 37 C.F.R. § 42.6(a)(2)(ii). Block quotation may be 1.5 spaced, but must be indented from both the left and the right margin. 37 C.F.R. § 42.6(a)(2)(iii). The font within the images is not 14-point, Times New Roman proportional font, and the quotations are not 1.5 spaced. The patent owner response does not comply with Rules 42.6(a)(2)(ii) and (iii).

Patent Owner must review the patent owner response and correct each instance of non-compliance. No later than June 13, 2017, Patent Owner must file a corrected patent owner response. The corrected patent owner response must include the word count certification required by 37 C.F.R. § 42.24(d). The corrected patent owner response must not exceed the 14,000 word limit, and the text of the images must be included in the word limit. Patent Owner may only correct the deficiencies discussed above and delete material. No other alterations or additions should be made.

IPR2016-00766, IPR2017-00640 (Patent 5,659,891)

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A redline version of the patent owner response, indicating the corrections, must accompany the corrected patent owner response and should be filed as an exhibit.

A paper indicating the following also must accompany the corrected patent owner response. The petitioner's reply includes citations to the patent owner response, and the corrections to the patent owner response likely change its pagination. Along with the corrected patent owner response, Patent Owner must file a paper, listing: each citation to the patent owner response in the petitioner's reply; where the citation occurs in the petitioner's reply, by page and line number; and the corresponding page and line number of the corrected patent owner response. The paper should be filed as an exhibit.

Patent Owner's Preliminary response
in IPR2017-00637, IPR2017-00640, and IPR2017-00642

Patent Owner filed a Preliminary response in each of IPR2017-00637, IPR2017-00640, and IPR2017-00642. The Preliminary responses do not comply with the Board's Rules.

First, the Preliminary responses reproduce numerous and lengthy passages of text from other documents as images. These images appear on pages 12, 34, and 49 of the Preliminary response in IPR2017-00637; pages 12, 15, 16, 23, 24, 28, 29, 34, 44, 47, 48, and 53–55 of the Preliminary response in IPR2017-00640; and pages 42–44, 47, and 55 of the Preliminary response of IPR2017-00642. An example is reproduced below.

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